

Application of the PROFISH Global List of irresponsible fishing vessels as a tool to combat Illegal Unregulated and Unreported Fishing in Eastern Africa

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Acronyms

COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
FMC	Fisheries Monitoring Centre
ICCAT	International Commission for the Conservation of Atlantic Tunas
IMO	International Maritime Organisation
IGAD	Inter Governmental Authority for Development
IUU	Illegal Unregulated and Unreported
IOTC	Indian Ocean Tuna Commission
IOC	Indian Ocean Commission
IRCC	Inter-Regional Coordinating Committee
IUCN	The World Conservation Union
KMA	Kenya Maritime Authority
MCS	Monitoring Control and Surveillance
RFMO	Regional Fisheries Management Organisation
SFA	Seychelles Fishing Authority
SWIOFC	South West Indian Ocean Fisheries Commission
SWIOFP	South West Indian Ocean Fisheries Program
SIOFA	Southern Indian Ocean Fisheries Agreement
WIO	Western Indian Ocean

1. Summary

Under the PROFISH partnership for sustainable fisheries, the World Bank is providing support to the IUCN to establish a publicly available list of vessels found to have been engaged in or supporting irresponsible fishing activities. The purpose of this PROFISH Global List of Irresponsible Fishing Vessels, is to provide a single database tool for national fisheries administrators and others, particularly from developing countries, to quickly check on the compliance status of foreign vessels seeking a fishing licence or seeking to register or flag in a country. A scoping study on the application of the Global List in addressing Illegal Unregulated and Unreported (IUU) fishing in the Western Indian Ocean (WIO) was conducted in Eastern Africa from December 2006 to March 2007. The study involved informal discussions and centered on a consultative two day workshop held in Mahé, Seychelles, hosted by Seychelles Fishing Authority and IUCN. Representatives from Fisheries authorities in Kenya, Somalia and Seychelles met with representatives from The World Conservation Union - IUCN, the Indian Ocean Tuna Commission (IOTC) and the Indian Ocean Commission (IOC) to discuss the Global List and IUU in the WIO.

Discussions focussed on two primary approaches to addressing IUU: data and information sharing which included the Global List, and MCS. The study team concluded that there were certainly merits in the Global List as a “one-stop” mechanism for checking on the compliance status of foreign vessels. However, other information sharing mechanisms were considered to be more useful, particularly those that were more regionally specific. It was felt that strengthening RFMOs such as the IOTC to enable them to provide regionally relevant IUU vessel lists for the WIO would be more effective. Global initiatives such as subscribing to the informal International MCS Network were also highly favoured as a tool for fisheries officers in Eastern Africa.

A very high priority was given to strengthening regional MCS as the primary tool for addressing IUU. The general feeling was that while information sharing and black lists are useful, poor MCS in mainland East Africa is the main reason for high levels of IUU in the WIO. The study concluded that strengthening national initiatives in Eastern Africa in particular national capacity to monitor and enforce fisheries regulations, as part of a regional MCS approach was considered a higher and more immediate priority. It was felt that effective MCS was likely to be a more effective deterrent against IUU than sharing of information on irresponsible fishing vessels through black lists.

2. Introduction

The EEZ waters of mainland Eastern African countries, in particular Somalia, Kenya, Tanzania and Mozambique are subjected to Illegal, Unreported and Unregulated (IUU) fishing by foreign fishing fleets. This is a major concern because it depletes the resources of small developing states (SDS), compromising food security and income, and also undermines the ability of states and their regional fisheries management organisations or commissions to manage stocks sustainably and to contribute to the conservation of biodiversity. In addition, potential revenue to the countries from these valuable fisheries is lost, a critical issue for developing countries in terms of food security and poverty alleviation.

Estimation of the extent of IUU fishing is difficult because it is not easily monitored. However the EU funded Monitoring Control and Surveillance (MCS) programme in Tanzania (2003-2006) revealed that probably only 5% of the vessels fishing in Tanzania's EEZ waters were licensed prior to the MCS programme based on the applications of licenses once the MCS programme started (Samoilys 2004). However, there is some disagreement over this interpretation with the increase in license applications seen as new fishing vessels in Tanzania's EEZ during 2004-2005 due to other factors, largely ecological. The magnitude of illegal fishing in Somalia is likely to be enormous due to the complete absence of MCS largely because of a civil war since 1991 (IUCN 2006). Anecdotal information indicates that IUU in Somali Indian Ocean waters is high. In Kenya, IUU is known to be significant but values are difficult to estimate. Global estimates give some of the highest incidences of IUU in the world as occurring in the Somalia, Kenya and Tanzania region of the WIO for the period 1980-2003 (Sumaila and Alder 2004). Apart from the loss of revenue to these countries, IUU also undercuts efforts by these East African countries to engage in or contribute to the management of the Indian Ocean's highly productive offshore fisheries.

Under the PROFISH partnership for sustainable fisheries, the World Bank is providing support to the IUCN to establish a publicly available list of vessels found to have been engaged in or supporting irresponsible fishing activities. The purpose of this PROFISH Global List of Irresponsible Fishing Vessels, is to provide a single database tool for national fisheries administrators and others, particularly from developing countries, to quickly check on the compliance status of foreign vessels seeking a fishing licence or seeking to register or flag in a country. It is hoped that the List will serve as a market mechanism to reduce the capital and resale value of irresponsible fishing vessels and to hinder reflagging; to assist national authorities and Regional Fisheries Management Organisations (RFMOs) to implement cooperative arrangements on fisheries compliance; to help port States in their efforts to prevent irresponsible fishing activities through the monitoring of vessels using their ports; and to help to identify the owners and operators of irresponsible fishing vessels.

The Seychelles, through the Seychelles Fishing Authority (SFA), has a well established Fisheries Monitoring Centre (FMC) with a Vessel Monitoring System (VMS), licensing, surveillance and control procedures which are operationalised through a Monitoring Control and Surveillance (MCS) plan. SFA has been managing foreign and national fishing vessels in its EEZ waters since the early 1980s and has had an operational MCS

system in place since 2001. Consequently SFA was requested by IUCN's Eastern Africa Regional Office (EARO) to play a lead role in this study and to host a consultation and data collation workshop in Mahé. Relevant regional agencies and programmes were also invited to participate in the workshop, namely the Indian Ocean Tuna Commission (IOTC) and the Indian Ocean Commission (IOC)'s programme on MCS.

The mainland countries of Eastern Africa represent some of the poorest countries in Africa with 40-50% of the population living below the poverty line. The potential revenue from fishing licenses in the EEZ waters of these countries could contribute substantially to their economies. This is particularly so for Somalia, which has the longest coastline in Africa (over 3000km), of which two thirds fronts the Indian Ocean with one third in the Gulf of Aden, and its EEZ is subjected to IUU. Somalia is also one of the least developed and poorest countries in Africa.

The Western Indian Ocean offshore pelagic fisheries represent some highly valuable tuna stocks and an abundance and diversity of other species that live in these waters such as demersal snappers, crustaceans and molluscs. Current fisheries management of these species is very weak along mainland East Africa due to lack of resources, capacity and very little or no MCS. In contrast the Island States in the WIO (e.g. La Reunion (France) and Seychelles) and the Indian Ocean Tuna Commission (IOTC) are actively engaged in management and research of their pelagic offshore fisheries. However, this is hampered by IUU, and the bulk of this is occurring in mainland East African countries' EEZ waters, which has significant implications because most of the pelagic species are highly migratory or straddling stocks.

3. Purpose

The purpose of this study was to provide a scoping paper on the potential of the PROFISH Irresponsible Fishing Vessels list for Eastern African countries, and to assess how best to collate data on vessels fishing illegally in the Exclusive Economic Zones (EEZ) of Eastern Africa countries.

4. Objectives

In recognition of the widespread occurrence of Illegal, Unregulated and Unreported (IUU) fishing in the Western Indian Ocean (WIO), this project was designed to provide for regional consultations and to assess the suitability of the PROFISH Irresponsible Fishing Vessels List as a means of addressing IUU. Specifically, IUCN-EARO led a process to achieve the following objectives:

- To consult regionally with Fisheries authorities in two mainland countries of the Western Indian Ocean: Somalia and Kenya, with Seychelles, and with other relevant agencies to establish the level of understanding on IUU in the EEZ waters of these three countries.
- To inform Eastern African countries of the proposal to develop a Global List of vessels fishing irresponsibly.

- To recommend the best methods for data collation and application in the preparation of compiling a list of IUU vessels in Somalia, Kenya and Seychelles EEZ waters that could feed data into the Global List.
- To consult regionally and internationally with agencies mandated to respond to IUU fishing.

As an add-on to the above objectives, the study provided the team with an opportunity to discuss IUU fishing more generally and to develop a strategy to combat IUU fishing in the WIO.

5. Methods

IUCN-EARO led the project and established a core team comprising representatives from the Fisheries authorities of Puntland, Somalia, Kenya, Tanzania, and Seychelles and the New Partnership for African Development (NEPAD), with Seychelles Fishing Authority (SFA) playing a leadership role in the team.

Preliminary meetings were held with key fisheries representatives to discuss the IUU scoping study that was designed to assess the efficacy of the PROFISH Irresponsible Fishing Vessels List. Meetings were held in Nairobi and Mahé, and other consultations were conducted by telephone and email with the Fisheries authorities of the three mainland states, Somalia, Kenya, and the United Republic of Tanzania, and with Seychelles Fishing Authority (Appendix I). The team established for the study that would work together on this scoping study paper and plan the consultation and data collation workshop in Seychelles were as follows:

Dr. Melita Samoilys, IUCN-EARO, Marine and Coastal Ecosystems Programme Coordinator (study leader)
 Mr Rondolph Payet, Managing Director, Seychelles Fishing Authority; Chair of the FAO South West Indian Ocean Fisheries Commission
 Mr Ali Mohammed, New Partnership for African Development (NEPAD)
 Mr Abdilwahid Hersi, Director General, Fisheries Department, Puntland, Somalia
 Mr Johnson Kariuki, Assistant Director, Fisheries Department, Kenya
 Mr Magese Bulayi, Senior Fisheries Officer, Fisheries Department, Tanzania

Key advisers were:

Harlan Cohen, IUCN Washington, Ocean Governance, Global Marine Programme
 Andrew Hurd, IUCN, Gland, Global Marine Programme

The primary tool used to conduct this scoping study was a regional workshop hosted by SFA, held in February 2007 in Mahé. The workshop agenda and list of participants is provided in Appendix II. The workshop was designed to:

a) inform Fisheries representatives from Eastern Africa of the PROFISH Global List of Irresponsible Fishing Vessels

b) Assess what information is available on vessels fishing in Eastern African countries' EEZs without a license to determine how data about such vessels might be incorporated in the Global List

c) Assess what national judicial proceedings are in place in each country to pursue illegal fishing contraventions.

Regrettably the Tanzanian fisheries representative was unable to attend the meeting in Mahé or contribute to this report, and therefore we could not include Tanzania in this report.

In order to understand the context of IUU in Eastern Africa and the relevance of the Global List to addressing IUU, representatives from mainland Eastern Africa were requested to consider the following questions and to prepare a small presentation (15-30 min) on their MCS system for controlling both foreign and national vessels fishing in their EEZs:

1. What systems are in place that allows you to monitor fishing vessels in port and in your EEZ, including the use of VMS?
2. What are the licensing mechanisms and conditions, and how many vessels are involved (being monitored or not)
3. What port State measures are in place? Inspection of vessels, at sea surveillance etc.
4. What regulations are in place for MCS activities? Please provide a copy or the complete regulations.
5. Do you have a policy on MCS? If so give details.
6. Please provide records of infringements in your waters in the past four years or reports of vessels fishing in your water.
7. What is the perception of IUU fishing in your waters?
8. Please present any future plans.

To set the context of IUU in the EEZs of Eastern African countries, the team discussed industrial and commercial fishing in general and their perceptions on IUU in the region. These discussions are first summarised here to set the context for the outcomes of this study.

Industrial and commercial fishing in Eastern Africa

The following table provides a quick summary of the current numbers of industrial or commercial fishing vessels licensed to fish in the EEZs of the participating Eastern African countries:

Table 1. Summary of information on licensed vessels fishing in Eastern African EEZ waters in 2006. LL = longline; PS = purse seine; SV = supply vessels. Size of EEZ is approximate.

Country	Size of EEZ	Total no national vessels licensed to fish in EEZ	Total no foreign vessels licensed to fish in EEZ	Flag state (no vessels licensed)
Seychelles	1.4 million km ²	32 (12 LL, 12 PS, 8 SV)	213 (168 LL, 42 PS, 3 SV)	33 (12 LL, 13 PS, 8 SV)
Kenya	143,000 km ² ^a	1 LL (swordfish)	58 (31PS, 27LL)	SPAIN 23PS SEYCHELLES 7PS, IRAN 1PS TAIWAN 27 LL
Somalia	756,000 km ² ^b	?	0	0

^a Fisheries Department (Kenya)

^b not claimed

There is a huge variation in the extent of earnings from foreign fishing vessels in Eastern African countries. In Seychelles 54% of foreign income earnings is from foreign fishing activities. Therefore finance ministry representatives will argue for free port access to generate income and will be very reluctant to reduce fishing capacity in the foreign fleet.

Kenya and Somalia perceive a large potential in revenue from foreign fishing vessels. This is not being realised at all in Somalia. In Kenya revenue from foreign fishing in the EEZ is in the order of \$ 2 million per year, probably only 5% of the potential.

Perceptions of IUU fishing in Eastern African EEZs

Both Kenya and Somalia are aware that IUU vessels are operating in their waters, and have been for many years but the extent of knowledge of these vessels is limited. Kenya has information that around 200 vessels pass through its EEZ per year and many may engage in IUU. These reports come from the Navy, and from legal vessels who report the IUU vessels to the Fisheries Department. In Kenya it is feared that IUU can lead to the loss of both short and long-term social and economic opportunities of the people who directly or indirectly depend on fisheries for their livelihoods. It may also have negative effects on national food security and the environment. Kenya also has informal information on illegal transshipment at sea. Somalia also estimates around 200-250 IUU vessels operate in the Puntland state waters alone.

Somalia feels particularly aggrieved by IUU fishing, stating it constitutes an “industrialised crime” against a stateless and defenceless nation. IUU is perceived to be eradicating and degrading Somalia’s marine resources, and to constitute a loss of property and loss to the lives of local fishing communities. Furthermore it was stated that

IUU fishing vessels are armed with anti-aircraft guns, so no local fishers can approach them. This has resulted in livelihood depression in coastal communities because they are afraid to go out fishing. It was noted that a substantial amount of fishing gear was distributed to Tsunami affected coastal communities but such gears were not used due to the aggressiveness of IUU fishing vessels close to shore. It was stated that 70% of coastal communities' income has decreased because of IUU fishing vessels.

The number of large IUU freezer longliners worldwide has probably dropped from about 150 to 40-50, partly as a consequence of the OPRT (www.oprt.or.jp/eng/e_home.html) buyback scheme which has been scrapping the vessels purchased, and partly through age attrition. Insurance on purse seiners is invalid if the boat does not have a license therefore IUU purse seiners are considered to be less likely. Regional bodies consider small long liners ("ice boats") are the main problem with regard to IUU in the WIO. Many are from Indonesia and Taiwan and operate like a "ghost fleet" through the EEZs of Maldives, Kenya, Tanzania and Mozambique. IOC-MCS is in the process of estimating the number of these vessels and is testing the use of satellite technology to address this question.

6. Outcomes

Fisheries representatives from Eastern Africa informed of the PROFISH Global List of Irresponsible Fishing Vessels

The workshop in Mahé served to inform the region of the PROFISH Partnership's initiative of a Global List of Irresponsible Fishing Vessels, and as a forum for regional consultations on the application of the Global List to the WIO region. The IUCN presentation on the proposed establishment of a Global List of Irresponsible Fishing vessels provided a useful summary of the List and a focus for discussions. The workshop also served to bring together the key Regional Fisheries Management Organisation, the Indian Ocean Tuna Commission (IOTC), a regional Monitoring, Control and Surveillance (MCS) programme, funded through the EU, that is addressing IUU and is based at the Indian Ocean Commission (IOC), senior Fisheries representatives from Seychelles, Kenya, Somalia and the New Partnership for African Development (NEPAD), to discuss the Global List and IUU in general, in an informal setting.

One of the highlights of the consultative meeting in Seychelles was a tour of the SFA FMC and a demonstration of their VMS system. Viewing this first hand and seeing live data on vessels fishing in Seychelles' EEZ was highly educational for the team, and provided much food for thought regarding options for a regional FMC for WIO countries.

Information on vessels fishing illegally in Eastern African countries' EEZs: determining how such information might be incorporated in the Global List

Five questions were discussed by the team to assess the level of information available on illegal fishing vessels in EEZ waters, to see how suitable this information is with respect to listing vessels on a Global List. Issues included monitoring, control, surveillance and regulations, as detailed below.

1. Systems to monitor fishing vessels in port and in the EEZ, including VMS

The Seychelles fisheries monitoring system ensures vessels are duly authorised to fish for tuna in the Indian Ocean. Through a VMS system, the monitoring unit of the FMC provides data to the enforcement unit and the Seychelles coastguard. An additional aspect that SFA monitors is trade to prevent illegal catches entering the market. Trade certification documents in use are (IOTC) and the (ICCAT) statistical documents for Swordfish and Bigeye tuna. With regards to Yellow Fin Tuna and other tuna like species that are exported by Seychelles Registered long liners, these are certified by the use of a certificate of eligibility (COE) of the catch. Designated personnel authorised by the SFA certify the trade certificates. The documents indicate the quantity of fish, ocean region and period fished. Other sections of the documents state the vessel detail, country of destination, importer/exporter details and details of the certifying authority. The vessels owner/agent submits their application for certification together with its bill of lading and logbooks prior to export. Upon receipt of these documents, the catch is verified with the fisheries logbook and the amount stated for export are cross-verified with amount stated on the bill of Lading. Through the use of VMS data, fishing locations period in question are also verified. Validated trade certificates are then archived electronically for rapid retrieval should any queries arise from an export.

Kenya recognises the importance of addressing IUU and is actively engaged in the planning and procuring of a VMS system and establishing a FMC. Current legislation requires that all foreign vessels have a VMS, though the country is not able to access this data since it has yet to establish a FMC. Exposure to the SFA FMC has been very helpful for Kenya in determining what system to install and what regional agreements on MCS might be possible. The Kenya Fisheries Department also plans to establish district, regional and national committees on IUU fishing.

Somalia is currently unable to operate a VMS system.

2. Licensing mechanisms and conditions

Seychelles has strict licensing criteria, such as the vessel must be on the IOTC positive list, must have VMS, and must have a local agent. Similarly, checking a vessel before a license or flag is issued is also strict and involves logbook checks and vessel history checks.

Kenya also invokes due diligence before issuing licenses, such as vessel history checking. License applications must be lodged through the relevant diplomatic representative of the vessel's flag state in Nairobi, or other representative as determined by the Director of Fisheries (this was introduced to accommodate Taiwanese vessels). Observers are not a condition of licenses in Kenya as yet. Although VMS is a license condition the Fisheries Department cannot track this data yet. Where any foreign fishing vessel is used in Kenya fishery waters contrary to the law, the master and

owner of the vessel are each considered to be guilty of an offence and liable to a fine of not less than fifty thousand Kenya shillings (\$725) and not exceeding five hundred thousand Kenya shillings (\$7,245) or to imprisonment for a period of not less than six months and not more than two years or to both.

3. Port state measures - inspection of vessels, at sea surveillance etc.

The Seychelles has implemented a strong enforcement plan where all vessels that come to port are inspected, and checks such as logbook data vs. VMS data are done. 380 vessels were inspected in 2006, an average of ~48 inspections per month. Patrols are conducted in cooperation with the coast guard and other government bodies, though an operating budget can be a problem. Patrols tend to be reactive, e.g. to VMS data, or from information from the outer islands.

Kenya has six short range patrol vessels for territorial waters; these are not adequate for surveillance throughout the EEZ. Port inspections of the vessels landing and transshipping fish at Mombasa port are carried out. One officer has been trained on purse seiners and longliners data collection while two other officers attended a port inspection course late last year. Fisheries Department has made contact details for the foreign flag fishing vessels and their agents mandatory and requiring them to furnish the list of vessels visiting the port for bunkering services, so that the authorities can prepare for inspection upon arrival. The Fisheries Department has also established mechanisms of liaising with the Kenya Navy, Kenya Ports Authority (KPA), Kenya Wildlife Service (KWS), Kenya Maritime Authority (KMA) and other relevant government agencies in receiving the list of fishing vessels that call at the port of Mombasa.

No port inspections or at sea surveillance have been carried out in Somalia. However, recently Puntland has established a Coast Guard and this will be used to conduct patrols. Training of Coast Guard personnel is currently underway. Coast Guard is part of the Ministry of Fisheries (there are three small Navy ships and 12 small speed boats). The Ministry has also recently installed nine radar stations all along the Puntland coast (both Gulf of Aden and Indian Ocean) which have been equipped with Radar, AIS, GPS, VHF & HF radios.

4. MCS, policy and regulations

The Seychelles established its Fisheries Monitoring Centre in 2001. A MCS system for licensing, VMS and enforcement was established with an operational plan that is reviewed every year. Apart from monitoring fishing in its own EEZ, Seychelles also monitors vessels flagged in Seychelles that are fishing elsewhere, as part of its flag State responsibility.

MCS is not operating in Kenya or Somalia. However, Kenya is actively developing a MCS policy to ensure sustainable exploitation of the country's fisheries resources. The policy seeks to address three pillars:

- Economic efficiency and empowerment
- Environmental integrity
- Social responsibility and good governance

The policy includes the formation of a national plan of action on IUU-fishing (NPOA-IUU), through integrating all the marine control agencies, procurement of surveillance equipment and services, including development and revitalisation of memoranda of understanding (MoUs) with the key stakeholders in the fisheries related fields.

Somalia is eager to establish a MCS policy and system and will require technical assistance to do so.

5. Records of infringements or reports of vessels fishing illegally in the past four years

The Seychelles Fishing Authority keeps a record of all cases of infringements detected to date. In the last four years a total of 16 vessels have been arrested for contravening the Fisheries Act and Regulations. These arrests relate to serious offences, fishing without a licence or fishing in a restricted area. For minor offences, for example failure to display name/call sign/licence number etc., vessels operators/skippers are normally given warnings.

Kenya reported there are frequent infringements of licensed vessels who do not report catches, or their dates of entering or leaving Kenya's EEZ. The Fisheries Department has difficulty in enforcing license conditions and is unable to collect the necessary data on these infringements. There are therefore no records available for Kenya.

There are no records for Somalia for the reasons stated above.

It was noted that the new EU agreements have a provision for electronic catch reporting which will help in misreporting. Electronic reporting is also recommended by the tuna RFMOs (Kobe meeting January 2007).

National judicial proceedings to pursue illegal fishing contraventions

Laws and regulations with respect to fishing in the EEZs of Kenya, Somalia and Seychelles were explained, as below. Territorial waters refer to coastal waters within 12 nm of the baseline (low water mark).

Licences are required in Seychelles for all vessels involved in commercial fishing (Fisheries Act 1986), which is defined as fishing to sell the product. In Kenya all national vessels of any type or size wherever they are fishing require a license (Legal Notice 34, Fisheries Act 1989 revised 1991). In Somalia all vessels of all sizes and types require a license (Fisheries Act Law 23 and 25, 2004), however, due to the ongoing civil unrest this law is not actively enforced and therefore no licenses have been issued since the 1980s. Nevertheless, foreign vessels have claimed they have official government licenses from Somalia.

The presence of reserves, MPAs, or no-take zones was also explained, as follows:

In Seychelles there are nine areas set aside within the EEZ for Seychellois fishers only. These are generally around the islands and on two banks, e.g. Mahé plateau, Amirante Islands, and are designed to maintain the demersal stocks for Seychellois fishers. There are no MPAs in the EEZs of Kenya or Somalia, though there are six MPAs within the territorial waters of Kenya, managed by Kenya Wildlife Service.

The relevant enforcement authority (e.g. Coast Guard, Police, Navy, wildlife authority, other) in each country was discussed, as follows:

In Seychelles the SFA is the lead enforcement agency. Under the Fisheries Act, the Minister responsible for the fisheries portfolio designates concerned personnel of the SFA, the coastguard and Island Managers as authorised officers. However, whilst these officers have the power to stop, board and search fishing vessels, they do not have the power of arrest.

In Kenya senior officers of the Fisheries Department can arrest and present the case to the Police for prosecution. The Navy and the Police can arrest as they are authorised officers under the Fisheries Act, but prosecution can only be conducted by Kenya Police or officers from the Attorney General's chambers. Beyond territorial waters the Navy arrests and brings the vessel to port where the fishers are taken to court for prosecution.

In Somalia enforcement is not applicable at present.

In Seychelles the MCS Section of SFA has resources for licensing, monitoring (FMC Unit) and enforcement. The SFA do not own surveillance platforms. However, through intergovernmental arrangements assets can be put at the disposal of the SFA to undertake fisheries control activities. These include aeroplane surveillance, five patrol vessels (Coast Guard), two of which are long range, and two are intermediate range, and one is coastal. SFA pay for aerial surveillance, while the Coast Guard pays for patrols with sometimes the SFA providing some financial assistance for the cost of patrols.

The Fisheries Department of Kenya has a Memorandum of Understanding (MoU) with the Navy to reimburse certain Navy expenses so that the Navy can conduct fisheries surveillance and enforcement within the EEZ but beyond the limit of territorial waters. Though signed, this MoU has not been activated.

Legal evidence required for a finding was explained as follows:

Seychelles uses the following evidence for findings:

- Logbooks (daily catch records are invariably kept by commercial fishing operators); Demarcation of route on chart from skipper's documentation;
- Personal records e.g. of the Master or fisher (records above those required by the license are often kept by commercial fishers for their own benefit);
- Inspector's statement which details evidence from his/her own observations;
- Aerial surveillance logs kept by the pilot;
- Patrol vessel boarding team will ask the Captain to sign a document confirming the precise location of boarding.
- Statement of the inspector(s).

Note that VMS are not admissible in court in Seychelles at present but this is being reviewed. Note also that the IOC's MCS programme is harmonising legal frameworks across the IOC area, which represents the Island member States.

In Kenya the Inspector's statement is key evidence provided in court, but more than one Inspector statement must be produced before evidence can be accepted. A fishing license must be produced on demand, and if not produced the vessel is impounded. For licensed vessels any lack of compliance with the conditions of the license (e.g. longliners are licensed only to catch tuna and tuna-like species) is assessed through inspection of the catch and gear. Logbooks must be produced on demand, and if not, this contravention is documented in the inspector's statement. Similarly, if a vessel refuses boarding by the Fisheries Department or Navy, this obstruction is documented in the Inspector's report. Transshipment at sea is illegal in areas subject to Kenyan jurisdiction and photographic evidence on this is admissible in court. Licensed vessels must report their entry and departure from EEZ to the Fisheries Director. If this is not done the vessel may be apprehended. However, licensed vessels rarely provide these reports. It is clear that procedures are in place, however their implementation is hindered by lack of funding and capacity to carry out effective MCS.

In Somalia there is no active system at present for prosecuting illegal fishing vessels. Further, the current judiciary may not be recognised internationally. Under the old Somalia Fisheries Act, Law 23 of the 1970s, any vessel illegally active in Somali waters was fined \$500,000.

Publication of action and rights of appeal were also discussed as follows:

In Seychelles the media pick up arrests and convictions and publicise them. Convictions are logged in the judiciary system which is available to the public. There is a right of appeal. In Kenya court judgements of convictions are issued in court proceedings, and all judgements are compiled in the annual Kenya law reports which also appear on a web site (www.kenya.law.org). The Fisheries Department keeps records of such judgements on file, and records are also kept with the Police. Rights of appeal follow any other appeal process within the Kenya judiciary system. The media do pick up on convictions to publicise them, but this is not guaranteed.

In summary, legal systems are in place with relevant laws, regulations and arrest procedures, for Seychelles and Kenya. For Somalia it appears that a framework of laws is in place that may be activated once civil strife ends. It is also clear that there are good resources (technical and financial) to promote enforcement or police action in Seychelles, but this is not the case in Kenya and Somalia. It is also clear that records of convictions are logged in official court proceedings in Seychelles and Kenya and that this information is publicly available and therefore available for compiling a Global List of IUU vessels. It is recommended however, that an RFMO or other suitable regional body be tasked with compiling this information and listing it on a regional black list (e.g. IOTC), so that compilers of the Global List simply source information from RFMO black lists on the web.

Regional perspectives

Indian Ocean Tuna Commission and IOC's MCS Programme

The presentations from IOTC provided the group with a useful overview of the Commission and its current priorities. A summary of key recommendations from the recent Kobe meeting (22-26th January 2007), the first world meeting of tuna RFMOs, was also presented. IOC presented pertinent information on their MCS programme for the team to consider. Key points relevant to the scoping study are summarised below.

There are 24 members of the IOTC. From mainland Eastern Africa only Kenya is a member though Tanzania has expressed interest in joining. 95% of the industrial tuna fishing vessels in the IO are from IOTC member countries. Lack of IOTC membership and weak implementation of flag State or member responsibilities, including port controls, within countries in the WIO is weakening the management of tuna in this region.

IOTC publishes negative and positive lists – the record of Authorised fishing vessels being the positive list, and the IUU list being the negative list. The tuna RFMOs discussed in Kobe unifying a global list - both negative and positive, and making this available on the web. A first draft of the unified list is finished and available at [www.tuna-
org.org](http://www.tuna-
org.org).

The lack of control over transshipment at sea is considered to be a major problem with regard to controlling IUU. It is proposed that observers will be mandatory on all cargo vessels by 2009/10, and a positive list of cargo vessels will also be generated. This is a global recommendation and the observer programme is therefore likely to operate on a global scale. The preferred option in the Indian Ocean is a ban on transshipment at sea but this has been rejected, though will be debated again. Banning transshipment at sea will increase port revenues substantially. It has been estimated that 95% of the income from industrial/commercial fishing in the COI member states (€ 500 million per year) is through the provision of services, with only 5% coming from license fees.

Port state controls are believed to be the most effective options for addressing IUU. Trade sanctions or market controls are also considered effective measures.

Effective enforcement is a huge challenge in the WIO. Participation by environmental NGOs is considered very important in addressing IUU because they can promote accountability as a serious issue for RFMOs to address. The noticeable presence of WWF at the Kobe meeting was welcomed.

IOTC decisions are binding (cf. SWIOFC) and VMS will become mandatory in July 2007 for all tuna vessels operating in the WIO.

IOC is the lead agency for marine-related projects for the Inter-Regional Coordinating Committee (IRCC), which involves the eastern and southern African regional organisations (IOC, COMESA, SADCC, IGAD, EAC, ESA). IRCC coordinates aid and projects between these bodies. The IOC's MCS Programme is addressing the management of long lining and purse seining in the WIO and is focussing on IUU. The programme covers the IOC member island states in the WIO and covers an area of

around 5.5 million km². With such a huge area patrolling is not viable; IOC believes port state measures are the most effective approach to combat IUU. Port inspection programmes will be supported through a detailed regional computerised listing of all the tuna fishing and support vessels using the IOC ports, which will be used to generate individualised inspection checklists. It will include listings of infractions and inspections. This database will also provide activity indices and is expected to be the most effective tool to control IUU fishing by small wet fish longliners which are obliged to enter port to export catches. Some elements of the database might be considered confidential.

IOC's MCS programme has found that none of countries had adequate legislation to deal with controlling IUU, so improving legislation has been a priority. By the end of 2007 adequate legislation will have been adopted across the IOC member states. This will include mandatory VMS for all vessels using ports in IOC states, including vessels without licenses. IOC is also recommending that its member countries ensure that all vessels using their ports have marking that corresponds to FAO recommendations. Harmonising license fees across the region is also recommended, and that fees be pegged to catch value and this be adjusted as catch values fluctuate. Similarly penalties need to be harmonised and made realistic. Currently penalties are ridiculously low and are not deterrents. Penalties in the order of: \$1 million; forfeit catch; and maybe forfeit vessel are being recommended.

NEPAD

The marine environment is increasingly on the agenda as African States recognise this represents one of the last frontiers for natural resource-based economic development. In addition, coastal people (living within 60-100 km of the coast) average 40% of the population in Africa, with this rising to 70-90% in the Island States. Fish far exceeds all other commodities from developing countries making a vital contribution to food security for 200 million people depending on fish as a main part of their diet. It is therefore a key component of NEPAD's Marine and Coastal Programme. Overexploitation and IUU is viewed as a major risk by NEPAD, and IUU fishing as a significant socio-economic threat.

NEPAD's priorities to address within the Marine and Coastal Programme are: illegal fishing and enhancing regional agreements such as fishing agreements with the EU. Governance failures are recognised such as inadequate legislation; lack of management/enforcement capacity; and lack of monitoring and enforcement. IUU fishing is a consequence of this and needs to be addressed as a matter of urgency.

Application of the Global List for addressing IUU vessels in Somalia, Kenya and Seychelles EEZs

There was good consensus in the workshop that the Global List could be a useful tool for addressing IUU fishing in the WIO. However, it was strongly recommended that such a list should limit itself to using already published black lists from RFMOs and other agencies to ensure that the vessels listed have been listed through due process, and therefore, liability will have already been addressed by the relevant RMFO.

On the basis of the recommendation above, this study recommends that the IOTC IUU list (available at <http://www.iotc.org/English/iuu/search.php>) which currently contains six vessels can be added to the provisional Global List being compiled by PROFISH for IUU vessels in the Indian Ocean.

It should be noted, however, that IOTC only deal with tuna and tuna-like species (www.iotc.org), and therefore the IOTC IUU vessel will not capture illegal trawling along the continental shelves of mainland East Africa, or fishing for non-tuna species. Trawlers are considered to be a significant element in the illegal fishing in Somali waters, and are said to occur in Kenya's waters.

Review of proposed data fields in the Global List

The prototype Global List contains the following fields (Lobach 2006):

- Name at the time of listing
- Previous names
- Lloyd's number
- Flag and former flags
- Radio call sign and former radio call signs
- INMARSAT numbers
- Owner of record and beneficial owner
- By whom the vessel listed or de-listed and when

The group discussed some of the difficulties with some of these proposed fields, as follows. Radio call signs change all the time and are therefore barely worth listing. IUU vessels typically change their name frequently, as often as three times a year. Transliterating names into English from a language that uses a non-Roman alphabet can also pose problems. As an example, some participants cited names from Chinese into English. Although probably only 10% of fishing vessels are registered with a Lloyd's number, it is a useful field for the database because it is presently the only stable vessel identifier. In addition the workshop recommended including the IMO number (a unique number issued by the International Maritime Organisation). Tuna RFMOs are currently discussing having the IMO number as a pre-requisite for including a vessel in the Record of Authorized Vessels. If INMARSAT VMS numbers are included then Argos should also be included. It was noted that if a vessel is listed, it is likely to throw away its VMS so the number becomes redundant.

Developing a strategy for combating IUU in the WIO

A key word in the struggle for combating IUU fishing is cooperation (Lobach 2006). Vessels engaged in IUU fishing move in and out of areas under jurisdiction of different States and operate within areas of competence of several RFMOs. Companies and individuals typically have nationalities that differ from those of the vessels themselves and fish deriving from IUU activities are put into the international trade. It is absolutely necessary that agencies, international organisations and States establish ways for cooperation, both formal and informal. This is the only way of achieving the goal of preventing, deterring and finally eliminating IUU fishing.

While the team recognised the value in the proposed Global List as one step in addressing IUU in the WIO, it was felt that a multi-faceted approach was advisable using strategies specific to the WIO and leaning on experiences from other seas such as the Pacific and Caribbean and their RFMOs. Key tools for managing fisheries in the EEZs, and thereby combating IUU are: MCS, VMS and FMCs, the strengthening of RFMOs, and close collaboration between programmes addressing industrial fisheries in the Indian Ocean such as those of the IOC and the South West Indian Ocean Fisheries Program (SWIOFP).

Monitoring, control and surveillance (MCS)

Participants in this study felt strongly that effective MCS was a high priority for addressing IUU in the WIO.

In terms of monitoring, VMS (Inmarsat or Argos) must be mandatory for commercial/industrial vessels. IOTC has already taken this step for tuna vessels. In terms of control, licenses and/or flag need to be carefully controlled for all foreign vessels. It was recommended that inspection and due diligence including information gathering on the history of the vessel before a flag or license is granted is crucial. This will require cooperation of all States and RFMOs. Problems due to the different mandates of the Police, Navy, Kenya Maritime Authority (KMA) and Fisheries Department are evident in flagging, licensing and arresting vessels in Kenya. Fisheries are now working hard to resolve this lack of harmony. Such weaknesses in developing countries' MCS systems are likely to be exploited by IUU vessels. In recognition of this problem Seychelles, Mauritius and Comoros have changed or are changing their laws so that authorised agencies cannot register a flag before getting authority from the Fisheries authority.

Regional approaches in legislation, monitoring, enforcement and data access is critical for a coordinated approach to IUU in the WIO. The lack of involvement by Eastern African countries in regional bodies managing the WIO fisheries (e.g. as members of IOTC, only Kenya is a member) weakens any regional approach to addressing IUU. This is relevant both to the behaviour of IUU vessels and to straddling stocks. The steps taken by the IOC MCS programme are significant, and need to be extended to the mainland states. Port state measures are particularly recommended by the regional agencies and to this end IOC, FAO and IOTC will have a symposium in June 2007 to discuss port state measures. This will give port inspectors much greater rights. Such measures need to be effective over a wide area, otherwise vessels will simply use ports outside the agreement.

7. Recommendations and key points

Mechanisms for addressing IUU in the WIO can be considered under two primary approaches: data and information sharing which includes the Global List, and MCS. These recommendations relate to these two approaches.

Information and data sharing

The study team concluded that there were certainly merits in a Global List as a “one-stop” mechanism for checking on the compliance status of foreign vessels. However, it was felt that because of the issue of due process the source of information was critical. It was therefore recommended strongly that data from the WIO on IUU vessels for the Global List be sourced from RFMOs. Consequently, for the WIO region the study recommended that PROFISH use the IOTC IUU vessel list and any that may be generated by the Southern Indian Ocean Fisheries Agreement (SIOFA, the High Seas Fisheries body in the Southern Indian Ocean established in 2005). It was noted that the South West Indian Ocean Fisheries Commission (SWIOFC) is an advisory body and not a management organisation and therefore is unlikely to draw up a black list because of the difficulties of due process. It is also recommended that PROFISH contact IATTC regarding the proposed Global List being developed by all tuna RFMOs. Possibly, the two lists could be merged as one, and resources combined.

This study recommends that WIO states that are not yet IOTC members be encouraged and assisted in becoming members. In addition, although IOC deals with island states, mainland countries can work with IOC through the IRCC or their relevant economic committee, such as the EAC for Kenya. This does, however, exclude Somalia which is a member of IGAD which is not a member of the IRCC. This study recommends that mainland countries engage with the IRCC which is actively pushing for the next phase of the MCS programme, likely to include mainland countries, when the IOC-MCS ends in 2008. Possibly NEPAD can assist in bringing Somalia into this programme due to its significance in WIO offshore fishing and problems of IUU.

Notwithstanding the difficulties of due process in posting a vessel fishing irresponsibly on a black list, the study team concurred that there were legal procedures in place in Seychelles and Kenya that could provide public evidence on prosecutions and that this may be available for compiling a Global List. This information is contained in the courts documentation and in Kenya is published on the web.

Other global information sharing initiatives that were recommended for the WIO included the International MCS Network. SFA has been a member of this international network for five years, and have found a lot of highly relevant information is exchanged through this network. SFA strongly recommended that mainland East African countries subscribe to this informal and confidential email network to cooperate and exchange information on IUU. The network is informal and therefore responses are very quick which makes it very effective. Current members include all the major fishing nations such as France, UK, Chile, Australia and the USA, amongst others, as well as Seychelles. SFA were very positive about this Network for checking on the status of vessels. Since the Network is informal, it could be used to post photographs of suspicious looking vessels to share between WIO neighbouring states. The costs of the Network are time and attending meetings.

More regionally specific data sharing mechanisms were also favoured. It was felt that sharing data on IUU regionally through a regional black list would be more effective than a global list in the WIO. It was therefore recommended that strengthening RFMOs such as the IOTC would enable them to provide regionally relevant black lists for the WIO. It was however recognised that IOTC's mandate is only tuna and tuna-like species and

therefore illegal fishing of deep demersal species or other non-tuna pelagics would not be captured by IOTC. There is a belief, though data are scarce, that illegal bottom trawling along the East African continental shelf is occurring and very little is being done about this.

Strengthening other regional bodies such as the SWIOFC though as an FAO Article VI body, SWIOFC has no management mandate. Nevertheless it was agreed that the issue of compliance should be brought to the SWIOFC as a matter of priority. Although a compliance committee within SWIOFC can have no legal mandate to address IUU vessels, SWIOFC may be able to mobilise resources to address IUU.

Specifically this scoping study recommended that two formal letters be written by IUCN and NEPAD, to the member States of SWIOFC involved in this study, Seychelles and Kenya, recommending that they take the issue of compliance to the SWIOFC as a matter of high priority.

Monitoring, control and surveillance

A high priority was given to strengthening MCS in the region as the primary tool for addressing IUU. The general feeling was that poor MCS off the coast of mainland Eastern Africa is the main reason for high levels of IUU in the WIO. Therefore building capacity to monitor and enforce fisheries regulations was a higher and more immediate priority than data sharing, although the latter was still considered to be important.

In contrast, island States in the region have a high capacity to monitor and control fishing in their EEZ waters. It was therefore recommended that bi-lateral agreements to partner on MCS in neighbouring EEZs be drawn up, for example, between Seychelles and Kenya. Seychelles signed a bilateral agreement with France in 2006 for exchange of information with La Réunion. It was felt that regional agreements would be even more effective, and a regional agreement between Somalia, Kenya, Tanzania and Seychelles would be most powerful. It was noted that the FMC at SFA was effective, well resourced and with high capacity, and could function as a regional FMC thereby saving mainland countries from establishing their own FMCs from scratch. It was also noted that NEPAD were well placed to approach the EU to support a regional FMC. It was also noted that the recently allocated World Bank grant of USD 260 million for fisheries in Sub-Saharan Africa provided an excellent opportunity for Eastern African countries to submit a proposal for funding VMS and a regional FMC for WIO countries. It was recommended that NEPAD could play a significant role in facilitating countries to submit this proposal.

There was consensus among participants that port inspections are a vital tool in combating IUU, and they should be improved considerably. This requires close collaboration between port authorities and fisheries authorities, and capacity building is an essential part of this. Steps have already been taken in Kenya which has now formed an IUU Committee which will address port inspections and ensure there is collaboration between the various agencies mandated to conduct inspections, such as the Fisheries Department, KMA, Navy and the Kenya Ports Authority. Port inspections are one of the main strategies of the IOC - MCS project, which is only working in the island States. A similar strategy is needed for the mainland countries. SWIOFP had MCS as part of its planned activities, and could have taken on this role, but it is now believed this has been

dropped due to lack of funding. A follow-up project is being planned in the ESA/EPA negotiations which would involve the EA coastal countries – probably 2010 under the 10th EDF. It is recommended that WIO States engage in the planning of this follow up MCS project.

8. References

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IUCN 2006. Country Environmental Profile for Somalia. Report prepared for the European Commission Somalia Operations Office. 59pp + annexes.

Lobach, T. 2006. The establishment of a global list of irresponsible fishing vessels. IUCN 86pp.

Samoilys, M.A. 2004. Managing fishery resources in Tanzania's Exclusive Economic Zone. A report to the World Bank, IUCN Eastern Africa Regional Programme, 14pp.

Sumaila, U.R. and Alder J. (2004). IUU fishing, international fisheries organizations and the Sea Around Us. Sea Around Us Issue 24 – July/Aug 2004: 5-6.

Appendix 1. IUCN-EARO Consultations and meetings on IUU in the WIO, January – February 2007

Meetings:

Date	Person	Institution	Location
11 January 2007	Dr Ole Miaron	Permanent Secretary Ministry of Livestock and Fisheries, Kenya	Nairobi
2 nd February 2007	Mr Johnson Kariuki	Assistant Director, Fisheries Department, Kenya	Nairobi
15 th February 2007	Mr Abdiwahid Hersi	Director General, Fisheries Department, Puntland	Mahé, Seychelles
	Mr Ali Mohammed	NEPAD Marine and Coastal Programme Assistant Director	
18 th February 2007 (informal discussions)	Mr Johnson Kariuki Mr Abdiwahid Hersi Mr Ali Mohammed Mr Johnson Kariuki		Mahé, Seychelles

Appendix II: Workshop on Combating Illegal, Unregulated, Unreported Fishing in the Western Indian Ocean

AGENDA

16th – 17th February 2006, Mahé, Seychelles

Venue: Seychelles Fishing Authority (SFA) Training Room

Friday 16th February

09.00 – 09.15	Introductory Remarks and Welcome by IUCN and SFA
09.15 – 09.45	IUCN/PROFISH Proposed Establishment of a Global List of Irresponsible Fishing Vessels – IUCN
09.45 – 10.00	Outputs of the Workshop – SFA
10.00 – 10.30	MCS in Seychelles
10.30 – 11.00	Coffee Break
11.00 – 11.30	COI MCS Project
11.30 – 12.00	Approaches to identifying/black listing vessels – SFA
12.00 – 13.30	Lunch
13.30 – 14.00	IOTC MCS Programme
14.00 – 14.45	MCS in Kenya, Tanzania and Somalia
14:45 – 15:00	NEPAD Perspectives on IUU fishing
15.00 – 15.30	Coffee Break
15.30 – 16.30	Visit to VMS Centres - SFA
16.30 – 17.00	Wrap up of day 1

Saturday 17th February

08.30 – 10.30	Visit to Fishing Port / IOTC
10.30 – 11.00	Coffee break
11:00 – 11:30	Discussion on data collation for black listing
11:30 – 12:00	Discussion on PROFISH approach for WIO versus other approaches
12:00 – 13:30	Lunch
13:30 – 15:00	Discussion on scoping study paper: outline of contents
15.00 – 15.30	Coffee Break
15:30 – 17:00	Final discussion and agreement on recommendations for IUCN IUU scoping paper; recommendations for next steps

Participants:

Dr Melita Samoilys, IUCN Eastern Africa
Mr Rondolph Payet, Director, Seychelles Fishing Authority (SFA)
Mr Gerard Domingue, Senior Manager Monitoring Control & Surveillance (MCS), SFA
Mr Jude Talma, Assistant MCS Manager, SFA
Ms. Bharaty Chetty, Licensing/Assistant MCS Manager, SFA
Mr Felix Labrosse, Enforcement Officer, SFA
Mr Abdiwahid Hersi, Director General, Fisheries Department Puntland, Somalia
Mr Johnson Kariuki, Assistant Director, Fisheries, Kenya
Mr Ali Mohammed, New Partnership for African Development (NEPAD) Marine & Coastal Coordinator
Mr Alejandro Anganuzzi, Executive Secretary, Indian Ocean Tuna Commission (IOTC)
Mr David Ardill, Regional Coordinator, MCS Project, Indian Ocean Commission (COI)

Appendix III: Prototype Global List of Irresponsible Fishing vessels

DRAFT PROTOTYPE OF A GLOBAL LIST OF IRRESPONSIBLE FISHING VESSELS

This list has been drawn up based on information from various IUU vessel lists established by regional fisheries management organisations (RFMOs), which have been placed on the public section on their websites. Information concerning de-listing of fishing vessels has been provided by the secretariats of the respective RFMOs.

RFMO which listed the vessel	Lloyds/TMO number	Current name	Previous name(s)	Current flag	Previous flag(s)	Call sign	Previous call sign(s)	Name of owner	Address of owner	Date included in this list	Date of de-listing by RFMO

Parties to RFMOs have agreed to take a number of actions against listed vessel. The lowest common denominators indicate that States shall take all necessary measures, to the extent possible under their applicable legislation to ensure that i) fishing-, support- and cargo vessels and mother-ships flying their flag do not participate in any transshipment operations with listed vessels, ii) not authorize them to land or tranship in their ports, iii) refuse to grant them their flag, except if the vessel has changed owner, and the new owner has provided sufficient evidence demonstrating the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the vessel or having taken into account all relevant facts, the flag State determines that granting the vessel its flag will not result in IUU fishing and iv) prohibit chartering of a vessel on the IUU vessel lists. States shall also encourage importers, transporters and other sectors concerned to refrain from transaction and from transshipment of any species caught by listed vessels. It should be noted that States are not requested to take these measures against de-listed vessels.